June 23, 2025

Finance and Expenditure Committee
Committee Secretariat: RegulatoryStandardsBill@parliament.govt.nz
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Submission on the Regulatory Standards Bill

About the Australian and New Zealand College of Anaesthetists (ANZCA)
ANZCA, which includes the Faculty of Pain Medicine and Chapter of Perioperative Medicine, is the leading authority on anaesthesia, pain medicine and perioperative medicine. It is the professional organisation responsible for postgraduate training programs of anaesthetists and specialist pain medicine physicians, and for setting the standards of clinical practice throughout Australia and Aotearoa New Zealand. Our collective membership comprises around 10,000 fellows and trainees in anaesthesia and pain medicine, of whom about 1300 work in Aotearoa New Zealand. ANZCA is committed to upholding Te Tiriti o Waitangi in the provision of competent, culturally safe care, and to promoting best practice and ongoing continuous improvement in a high-quality health system.

Executive summary

1. ANZCA **opposes** the Regulatory Standards Bill (the bill) in its entirety because:

    - It would contravene our responsibilities to Te Tiriti o Waitangi and Pae Ora Healthy Futures Act, 2022 and negatively affect the health of New Zealanders.
    - It would undermine the standards set by health practitioner regulatory authorities that focus on public safety and standards of our health workforce.
    - It omits accepted standards and principles of legislation, regulation, and governance for public good, including public health, workplace safety and environmental protection.
    - The bill effectively concentrates over-riding power and decision-making into the domain of the Minister (of regulatory standards) and the Minister's appointees.
    - It undermines the sovereignty of parliament and the democratic process that ensures representation of all New Zealander's and recognition of social rights.
    - It removes the independence of our judicial system and law-making that protect and provide legal frameworks for all citizens.
    - It is unnecessary, ill-defined, restrictive, and likely to be a significant barrier to the development and implementation of evidence-based policy, especially for health and wellbeing.
    - It exposes Aotearoa New Zealand to a wide range of social and financial risks.

2. ANZCA would like to make an oral submission to the Committee.

Discussion

3. ANZCA welcomes the opportunity to submit on this bill which, along with other medical colleges, health practitioner organisations, and public health bodies, we strongly **oppose.** If implemented, the bill risks undermining the network of interconnected regulation predicated on public safety, health, and wellbeing. This in turn will negatively impact on

the standards of our medical specialist workforce and reduce the ability to deliver safe, effective health care across Aotearoa New Zealand.

Te Tiriti o Waitangi

4. A bill that purports to set standards and yet ignores the fundamental obligations imposed by the Te Tiriti o Waitangi partnership between tangata whenua and the Crown, breaches ethical standards and is a violation of the Treaty itself.

5. The Crown's deliberate lack of engagement with, and disengagement of, tangata whenua, its Tiriti o Waitangi partner, is further evidence that the bill is not fit for purpose in 21st century Aotearoa New Zealand.

6. Moreover, the bill assures the continued failure to consult fairly with Māori (and others) by restricting the principle of consultation to those "directly and materially affected by the legislation" (Clause 8). That would not only limit the ability of iwi and hapu to participate in the law-making process but would effectively remove the requirement to consult with any individuals and organisations who historically, professionally or by conviction use their knowledge and expertise to act in the public interest.

7. Health practitioners know from data and direct experience the human, social and economic cost of health disparities for Māori – reduced life expectancy, higher rates of cancer and other diseases, less access to medicines, and overall poorer outcomes than non-Māori. They also know the contribution of historic injustices, institutional discrimination, and racism in maintaining those preventable disparities, and that addressing these and other social determinants of health is the only path to the 'equality' the bill seeks.

8. If implemented, policies and affirmative action to improve equity – for Māori and others – such as enhanced access to medications and immunisations, improved primary and community care access, and engagement with hospital-based services will be more difficult to implement and will perpetuate the inequitable access to and outcomes from healthcare that currently exists.

Principles of responsible legislation

9. The principles fail to reflect many elements of good governance and regulation. The bill's narrow focus on personal freedom and property rights, setting these as the primary standards for all future legislation, and for assessing past legislation, are contrary to the established principles of our social democracy.

10. The principles provide for the rights of legal persons (both human and corporate) to be privileged over the rights and well-being of the community and the country.

11. They do not reflect the responsibility of the government to be concerned for and regulate to enhance the well-being of the whole community or population. The bill does not propose testing regulations for their impact on, for example:

    - improving equity, equality, and well-being in Aotearoa New Zealand.
    - Māori, as agreed by Te Tiriti o Waitangi.
    - ameliorating the adverse impacts of climate change.
    - increasing the country's economic and environmental sustainability.
    - discrimination against minorities.

12. The principles do not exclude behaviour that is unethical or against the public interest. Fifty years ago, the Commerce Act, 1975 set out a comprehensive list of restricted and prohibited trade practices to promote efficiency "and the welfare of consumers, through the regulation, where desirable in the public interest, of trade practices." (Part 2 s 20 (a). (ANZCA emphasis).

13. Public health is dependent on legislation and regulation which ensures the provision of basic human essentials such as clean air, clean water, nutrient rich soil, and uncontaminated food, and healthy housing. The bill mitigates against the provision of these firstly because the principes focus on individual rights and private property ignoring collective rights and values such as minimising harm to humans and the environment.

14. The 2016 outbreak of gastroenteritis in Havelock North due to water contaminated by sheep faeces is a vivid example of what can happen when regulation fails to deliver on such basic public health principles. 5,500 of the town's 14,000 residents were estimated to have become ill with campylobacteriosis. 45 were subsequently hospitalised, the outbreak possibly contributed to three deaths, and an unknown number of residents continue to suffer health complications. The total cost was estimated at $21,029,2881[1].

15. This bill takes deregulation a step further in its privileging of individual (including corporate) property rights over public interest in that the government may be held accountable for business losses that regulation to protect public and environmental health may bring about.

16. There is significant concern that the government (taxpayers), may have to compensate multinational corporations that knowingly continue to cause harm with products such as tobacco, liquor, and gambling. As an example, if vape products were to be made prescription only to reduce harm to health, this could be seen as restricting a company's income potential, and the company may claim financial compensation. Such claims are not unknown. International tobacco company Philip Morris lodged a $25m claim against Uruguay when that country introduced plain packaging as part of its antitobacco legislation. Although eventually the international court found in favour of Uruguay it took six years and considerable resources to settle the case[2].

Concentration of power - challenge to democracy and government efficiency

17. The bill is unnecessary. Existing rules governing regulatory standards and the regulation-making processes already ensure that proposed government regulations are appropriately scrutinised and vetted.

18. Much of what the bill attempts to achieve is within the scope of and achieved by the Legislation Design and Advisory Committee through their Legislation Guidelines 2021 which provides a much broader, comprehensive range of considerations, and the Regulations Review Committee.

19. The bill seeks to constrain the scope of Acts that future parliaments may wish to pass. This fundamentally undermines the sovereignty of Parliament.

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[1] Sapere Research Group. The Economic Costs of the Havelock North August 2016 Waterborne Disease Outbreak. Wellington. Ministry of Health. Aug 2017. Wellington Available from: https://www.health.govt.nz/system/files/2017-09/havelock_north_outbreak_costing_final_report_-_august_2017.pdf

[2] Philip Morris Brands SÀRL and ors v Uruguay, Decision on jurisdiction, ICSID Case No ARB/10/7, IIC 597 (2013), despatched 2nd July 2013, United Nations [UN]; World Bank; International Centre for Settlement of Investment Disputes [ICSID] From: Oxford Public International Law (http://opil.ouplaw.com)

20. It gives too much power to the Minister of Regulation to intervene in and overrule bills brought forward by other Ministers undertaking their portfolio responsibilities.

21. There is no need for a Regulations Standards Board. The assessment against the revised principles of the Bill, can be undertaken by staff of the Ministry of Regulation which can report to Cabinet on a bill in the same way that Treasury does.

22. The proposed Regulations Standards Board, appointed by the Minister of Regulation will have wide powers to investigate and review laws created by Parliament. This circumnavigates the current checks and balances along with the decision process to review laws, which sits with our courts, and is independent of political influence.

23. The proposed board (appointed by the Minister) may restrict the development and implementation of evidence-based and innovative policy. Ministers and public servants would be compelled to consider whether their proposals would pass the highly selective regulatory standards imposed by bill. That in turn would create multiple extra layers of bureaucracy, delays, and negotiation, contrary to the purpose of the bill.

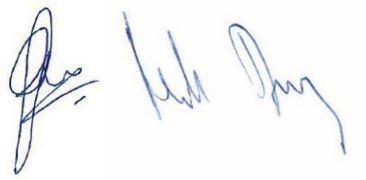
Conclusion

24. In conclusion we **recommend** that the Bill **does not** proceed and that you **agree** that the bill:

    - contravenes our responsibilities to Te Tiriti o Waitangi and Pae Ora Healthy Futures Act, 2022 and would negatively affect the health of New Zealanders.
    - would undermine the standards set by health practitioner regulatory authorities that focus on public safety and standards of our health workforce.
    - omits accepted standards and principles of legislation, regulation, and governance for public good, including public health, workplace safety and environmental protection.
    - concentrates over-riding power and decision-making into the domain of the Minister (of regulatory standards) and the Minister's appointees.
    - undermines the sovereignty of parliament and the democratic process that ensures representation of all New Zealander's and recognition of social rights.
    - removes the independence of our judicial system and law-making that protect and provide legal frameworks for all citizens.
    - is likely to be a significant barrier to the development and implementation of evidence-based policy, especially for health and wellbeing.
    - Exposes Aotearoa New Zealand to a wide range of social and financial risks.

25. Please note that ANZCA wishes to make an oral submission.

Nāku noa, nā



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